THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.10208 OF 2007

DATED 04th JULY, 2007

BETWEEN

Kamadi Matha Raju and another.

… Petitioners

AND

The District Collector, East Godavari District, Kakinada and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.10208 OF 2007

ORDER:

One Kamadi Matha Raju and Gadimoga Marine Fishermen Cooperative Society filed the present writ petition seeking a writ of Mandamus declaring the two proceedings, dated 23.05.2006 and 15.12.2006, of the first respondent, as arbitrary, capricious and in violative of Articles 19 and 21 of Constitution of India and also in violative of Section 58 of A.P.Panchayat Raj Act, 1994 and consequently to set aside the said proceedings.

The first petitioner is statedly upa-sarpanch of Gadimoga Village and the second petitioner is a cooperative society registered under A.P.Cooperative Societies Act, 1964. Gadimoga Village is situated at a distance of five kilometers from Bay of Bengal towards East. There are several creeks and backwater canals passing through the nearby villages leading to Bay of Bengal including three canals in the village known as Gaderu canal, Mandara canal and Vodanalu canal. In addition to these three canals, there is a creek of eight meters width running through the unsurveyed land. Some of the villagers have dug tanks in an extent of Acs.100.00 and are cultivating fish and prawn as it is very congenial for prawn/pissi culture due to continuous tidal waves from Bay of Bengal entering Acs.400.00 of unsurveyed land. It is their case that sixth respondent purchased the land admeasuring Acs.363.00 situated on the three sides of the Gadimoga village for establishing gas based on-shore terminal. It is alleged that the sixth respondent made an application, for allotment of land admeasuring Acs.8.36 for the purpose of laying pipeline for providing drinking water and also for construction of hospital for medical assistance for its workers and also for the villagers. The first respondent, by order, dated 23.05.2006, allotted the said land. It is further alleged that first respondent, by order, dated 15.12.2006 has allotted another extent of land admeasuring Acs.7.27 to sixth respondent. Assailing the two proceedings,

dated 23.05.2006 and 15.12.2006, present writ petition is filed.

Learned counsel for petitioners submits that the land, which was allotted to the sixth respondent, is a poramboke land, vests in the Grampanchayat and hence, the said allotment by the Government is illegal and violative of provisions of Section 58 of A.P.Panchayat Raj Act, 1994. According to the learned counsel, all poramboke lands like grazing lands, threshing floors, burning and burial grounds, cattle stands, cart stands and topes vests in the Gram Panchayat and if it is required by the Government for any specific purpose, the Government may by notification direct that the poramboke land shall cease to vest in the Gram Panchayat. He contends that the notification is not issued in the present case and hence, the allotment of land to the sixth respondent *ultra vires* the provisions of Panchayat Raj Act. Secondly, he contends that sixth respondent already purchased Acs.363.00 of land on three sides of Gadimoga village, and it may construct hospital and provide drinking water scheme in the said land.

A bare perusal of Section 58 of the Act would show that grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts tanks and topes at the disposal of the Government vests in the Gram Panchayat. If the Government requires these lands for any specific purpose, Sub-Section (2) of Section 58 of the Act requires the Government to direct that the poramboke land referred to hereinabove is mentioned in Section 58(1) of the Act and shall cease to vest in the Gram Panchayat. When only specific items of land find place in Sub-Section (1) of Section 58 of the Act, it is not possible to enlarge these items by including the Government land classified as grama kantam land. Learned counsel for petitioner placed reliance on judgment of this Court in **Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v District Collector, Chittoor**[1]. The judgment appears to have been rendered *per incuriam* without noticing sub-section (1) of Section 58 of the Act and there is no discussion or reference to any precedent. Therefore, the judgment being *subsilentio* is not binding precedent. Secondly, under paras 2 and 3 to BSO 15 of Andhra Pradesh Board of Revenue Standing Orders, village site poramboke land (grama natham area/grama kantam land) always vests in the Government and is intended for being allotted as house sites in future. If the petitioner claims ownership, it is always open to him to establish his title in a duly instituted suit before the Civil Court.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

04.07.2007.
pln

[1] 1997(2) ALT 486